

Means Test
11 U.S.C. §707(b)(2)

The means testing mechanism presumes abuse in individual cases if, after subjecting a petition to financial analysis, it is determined that the debtor could repay a threshold level of general unsecured debt. This computation is based in large part on two elements: (1) the debtor's current monthly income [generally, income from all sources, including contributions by others to household expenses but excluding Social Security benefits]; and (2) allowed deductions, utilizing an IRS standard for expenses, as well as several other detailed expense standards.

In order to comply with the means test requirements, all individual chapter 7 consumer¹ debtors and each individual debtor in a joint case will complete Official Form 22A. The petition

¹ Individual chapter 11 debtors and all chapter 13 debtors must complete a Statement of Current Monthly Income (Official Form 22B or 22C) . Although similar to the chapter 7 form, these forms are used in consideration of the debtor's plan of reorganization, instead of functioning as a means test.

debtor's answer regarding presumption of abuse and respond appropriately in CM/ECF.

- CM/ECF will review the debtor's response to checkbox question (courts may choose to quality control this function)
- CM/ECF will generate the appropriate § 341 notice regarding presumption of abuse.
- In accordance with 11 U.S.C. 704(b)(2)(b), not later than 5 days after receiving the Trustee's statement regarding presumption of abuse, the clerk provides a copy of the statement to all creditors.²
 - Statement/notice to creditors will be created by CM/ECF from data received by Trustee.

If Form 22A is not filed with the petition:

- The clerk's office could issue a deficiency notice (combined with other deficiencies indicated at case opening) with a time certain deadline - typically 15 days as debtor has same amount of time to file means the test information as allowed to file the schedules [Rule 1007](If the deficiency is not corrected, the case can be dismissed once the deadline expires).
- CM/ECF will automatically queue § 341 notice with language noting that there is not enough information to conclude whether there is a presumption of abuse.³
- If the Debtor files the appropriate Form 22A-C within 15 days of filing of petition, and the presumption of abuse checkbox is indicated, the clerk's office must send a separate notice stating that there is a presumption of abuse regardless of whether the 10-day time limit under 11 U.S.C. § 704(b)(1)(a) has expired.
- In accordance with 11 U.S.C. 704(b)(2)(b), not later than 5 days after receiving the Trustee's statement, the clerk provides a copy of the statement to all creditors indicating that there is a presumption of abuse.⁴
 - Statement/notice to creditors will be created via CM/ECF from data received by the U.S. Trustee.
- If a Chapter 13 converts to a Chapter 7, the court may require the debtor to file Form 22A, the means test form for Chapter 7 cases. This form requires different

² The U.S. Trustee must review the materials filed by the debtor. Not later than 10 days after conclusion of the §341 meeting, the Trustee must file, with the court, a statement whether there is a presumption of abuse. 11 U.S.C. § 704(b)(1)(a).

³ Once the BNC receives the file, the BNC will automatically check notice recipient addresses against its preferred creditor address list.

⁴ When the section 341 meeting has been continued and is not concluded until after the time a discharge would normally be issued, the court may want to consider withholding the granting of the discharge until the U.S. Trustee statement regarding abuse has been filed or until the time to do so has expired.

information from the information required by form 22C. In a converted case there is a question regarding the requirement that all figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case. The decision whether to look back six months from the date of the petition or to look to the date of the conversion is a judicial determination.